

1 GREGORY J. ROCKWELL, ESQ. (SBN 67305)

2 grockwell@bjg.com

3 JILL P. SAZAMA, ESQ. (SBN 214215)

4 jsazama@bjg.com

5 BOORNAZIAN, JENSEN & GARTHE

6 A Professional Corporation/File #24983

7 555 12th Street, Suite 1800

8 P. O. Box 12925

9 Oakland, CA 94604-2925

10 Telephone: (510) 834-4350

11 Facsimile: (510) 839-1897

12 Attorneys for Defendants

13 COUNTY OF ALAMEDA and

14 SHERIFF GREGORY J. AHERN

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 RONALD ROTH, on behalf of himself and all)
18 those similarly situated,)

19 Plaintiffs,)

20 vs.)

21 COUNTY OF ALAMEDA, ALAMEDA)
22 COUNTY SHERIFF GREGORY J. AHERN,)
23 in his individual and official capacities,)
24 ALAMEDA COUNTY SHERIFF'S)
25 DEPUTIES DOES 1 through 50 and ROES 1)
26 through 20, inclusive,)

27 Defendants.)
28

Case No.: C 08-00236 BZ

**ANSWER TO COMPLAINT – DEMAND
FOR JURY TRIAL**

Complaint Filed: January 14, 2008

21 **COME NOW** defendants COUNTY OF ALAMEDA and ALAMEDA COUNTY
22 SHERIFF GREGORY J. AHERN and, for their answer to the plaintiffs' complaint for damages on
23 file herein, admit, deny and allege as follows:

24 1. Answering the allegations of numbered paragraphs 3, 5, 10, 18, 19, and 28 through
25 30 of said complaint, defendants lack information and belief sufficient to admit or deny the
26 allegations contained in said paragraphs, and, based upon such lack of information and belief,
27 defendants deny said allegations.

1 2. Answering the allegations of the unnumbered "JURISDICTION" paragraph and of
2 numbered paragraphs 2, 4, 11 and 17 of said complaint, defendants admit the allegations of said
3 paragraphs.

4 3. Answering the allegations of the unnumbered "INTRODUCTION" paragraphs and
5 of numbered paragraphs 1, 6 through 9, 12 through 16, 20 through 27, 31, 33, 35 and 37 of said
6 complaint, defendants deny each and every and all of the allegations of said paragraphs and further
7 deny that plaintiff has sustained any injuries, losses or damages of any kind or character as a result
8 of any conduct on the part of these answering defendants.

9 4. Answering the allegations of paragraphs 30, 32, 34 and 36 of said complaint,
10 defendants incorporate their responses to the allegations of the paragraphs incorporated therein.

11 **SEPARATE AFFIRMATIVE DEFENSES**

12 **AS A FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
13 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
14 **THEREOF**, these answering defendants allege that the complaint fails to state claims upon which
15 relief can be granted against these defendants.

16 **AS A SECOND, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
17 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
18 **THEREOF**, these answering defendants are informed and believe and thereon allege that
19 plaintiffs were negligent in and about the activities alleged in the complaint; that said negligence
20 contributed and was a proximate cause of plaintiff's alleged injuries and damages, if any, or was
21 the sole cause thereof; and that if plaintiff is entitled to recover damages against defendants, then
22 defendants pray that the recovery be diminished or extinguished by reason of the negligence of
23 plaintiff in proportion to the degree of fault attributable to plaintiff.

24 **AS A THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
25 **AS A FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
26 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
27 **THEREOF**, these answering defendants are informed and believe and thereon allege that by
28

1 reason of plaintiff's own acts and omissions, plaintiff is estopped from seeking any recovery from
2 defendants by reason of the allegations set forth in the complaint.

3 **AS A FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
4 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
5 **THEREOF**, these answering defendants allege that the complaint, and each cause of action
6 therein, is barred because any detention and/or of plaintiff by defendants or their employees was
7 lawful, constitutional privileged and justified.

8 **AS A SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
9 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
10 **THEREOF**, these answering defendants allege that the complaint, and each cause of action
11 therein, is barred because defendants were legally authorized to detain, search and incarcerate the
12 plaintiff.

13 **AS A SEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
14 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
15 **ACTION THEREOF**, these answering defendants allege that the defendants and their employees
16 had legal justification for all of their actions and omissions and therefore the complaint and each
17 and every cause of action therein is barred.

18 **AS A EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
19 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
20 **THEREOF**, these answering defendants are informed and believe and thereon allege that the
21 complaint and each and every cause of action therein is barred because plaintiff failed to mitigate
22 her damages, if any there were.

23 **AS AN NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
24 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
25 **THEREOF**, these answering defendants allege that the complaint fails to state a Federal civil
26 rights claim against the defendants under the doctrine of *Monell v. Department of Social Services*,
27 436 U.S. 658 (1978).
28

1 **AS A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO THE**
2 **UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF ACTION**
3 **THEREOF**, these answering defendants allege that the plaintiff has not been damaged in any sum
4 or sums, or otherwise, or at all, by reason of any act or omission by defendants.

5 **AS A ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
6 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
7 **ACTION THEREOF**, these answering defendants allege that the defendants and their employees
8 are immune from any liability and protected against the burden of litigation under the doctrine of
9 qualified immunity and the common law immunities protecting peace officers, correctional
10 officers, prosecutors and public officials.

11 **AS A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
12 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
13 **ACTION THEREOF**, these answering defendants allege that they are immune from liability for
14 exemplary damages pursuant to provisions of section 818 of the California Government Code and
15 by the U. S. Supreme Court's decision in *Newport v. Fact Concert, Inc.*, 453 U.S. 247.

16 **AS A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
17 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
18 **ACTION THEREOF**, these answering defendants allege that they are not liable for any acts or
19 omissions of their employees which occurred outside of those employees' scope of employment.

20 **AS A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
21 **TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
22 **ACTION THEREOF**, these answering defendants are informed and believe and thereon allege
23 that the plaintiff failed to comply with the requirements of the California Tort Claims Act of the
24 California Government Code and therefore all claims of the plaintiff are barred.

25 **AS A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
26 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
27 **ACTION THEREOF**, these answering defendants allege that they were at all times acting
28

1 without malice and in good faith and therefore are entitled to immunity from suit.

2 **AS A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
3 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
4 **ACTION THEREOF**, these answering defendants allege that they are not liable under 42 U.S.C.
5 §1983 because sheriffs are not "persons" within the meaning of section 1.

6 **AS A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
7 **TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
8 **ACTION THEREOF**, these answering defendants allege that the complaint and each cause of
9 action therein is barred by the applicable statutes of limitation including without limitation
10 Government Code §945.6 and California Code of Civil Procedure §335.1.

11 **AS A EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
12 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
13 **ACTION THEREOF**, these answering defendants allege that the County and its employees are
14 immune from all liability alleged in the complaint and each and every cause of action therein
15 pursuant to Government Code Sections 815(b), 815.2(b), 815.4, 818.4, 818.6, 818.7, 818.8, 820(b),
16 820.2, 820.4, 820.6, 820.8, 821, 821.2, 821.4, 821.6, 821.8, 822, 822.2, 830.2, 830.4, 830.6, 830.8,
17 830.9, 831, 831.2, 831.25, 831.3, 831.4, 831.5, 831.6, 831.7, 831.8, 835.4, 840.6, 844.6, 845,
18 845.2, 845.4, 845.6, 845.8, 846, 850, 850.2, 850.4, 854.8, 855, 855.2, 855.4, 855.6, 855.8, 856,
19 856.2 and 856.4.

20 **AS A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
21 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
22 **ACTION THEREOF**, these answering defendants are informed and believe and thereon allege
23 that by conduct, representations and omissions, plaintiff has waived, relinquished and/or
24 abandoned any claim for relief against these defendants respecting the matters which are the
25 subject of the complaint.

26 **AS A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE TO**
27 **THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
28

1 **ACTION THEREOF**, these answering defendants are informed and believe and thereon allege
2 that plaintiff unnecessarily delayed in protecting the right or rights asserted and has unreasonably
3 delayed in bringing this action, and she is therefore guilty of laches and consequently is not
4 entitled to the relief sought.

5 **AS A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
6 **TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
7 **ACTION THEREOF**, these answering defendants allege that at all times mentioned in the
8 Complaint, defendants performed and discharged in good faith each and every obligation, if any,
9 owed to plaintiffs.

10 **AS A TWENTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE**
11 **DEFENSE TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH**
12 **CAUSE OF ACTION THEREOF**, these answering defendants allege that at all times material to
13 this action, defendants and their employees had reasonable cause to act and acted properly in valid
14 law enforcement activities.

15 **AS A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE**
16 **TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH CAUSE OF**
17 **ACTION THEREOF**, these answering defendants allege that at all times relevant to plaintiff's
18 Complaint herein, plaintiff knowingly, voluntarily and willingly consented to the search of her
19 person, if, in fact, any search was performed.

20 **AS A TWENTY-FOURTH, SEPARATE AND DISTINCT AFFIRMATIVE**
21 **DEFENSE TO THE UNVERIFIED COMPLAINT ON FILE HEREIN, AND TO EACH**
22 **CAUSE OF ACTION THEREOF**, these answering defendants allege that plaintiff's claim is
23 barred under the doctrine set forth in the U.S. Supreme Court's decision in *McMillian v. Monroe*
24 *County* (1997) 117 S. Ct. 1734 and the Eleventh Amendment to the U.S. Constitution in that in
25 engaging in the conduct complained of, if it occurred at all, defendants were acting in the
26 capacities as officers of the State of California and not the County of Alameda.

27 **WHEREFORE**, these answering defendants pray as follows:
28

1 1. That plaintiff take nothing by of her complaint and that these answering defendants
2 be dismissed hence;

3 2. For reasonable attorneys' fees;

4 3. For costs of suit incurred herein; and

5 4. For such other and further relief as the Court deems fit and proper.

6 **DEMAND FOR JURY TRIAL**

7 Defendants hereby demand a jury trial in this matter.

8
9 DATED: April 15, 2008

10 BOORNAZIAN, JENSEN & GARTHE
11 A Professional Corporation

12 By: 

13 GREGORY J. ROCKWELL, ESQ.
14 Attorneys for Defendants
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE BY ELECTRONIC SERVICE

I, the undersigned, declare as follows:

I am employed in the County of Alameda, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 12th Street, Suite 1800, P. O. Box 12925, Oakland, California 94604-2925.

On the date indicated below, at the above-referenced business location, I served the **ANSWER TO COMPLAINT – DEMAND FOR JURY TRIAL** on the below-named party and caused said document to be transmitted using ECF as specified by General Order No. 45 to the following party:

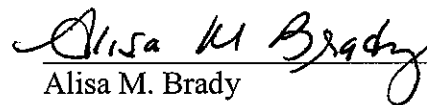
Mark Merin, Esq mark@markmerin.com
Joshua Kaizuka, Esq. joshua@markmerin.com
Law Offices of Mark Merin
2001 P Street, Ste. 100
Sacramento, CA 95811

Attorneys for Plaintiff RONALD ROTH

Tel: (916) 443-6911
Fax: (916) 447-8336

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Oakland, California, on April 15, 2008.


Alisa M. Brady

24983\430591